

Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from VACAPES Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.5(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICOMP (§218.5(d))).

(4) Results from specific stranding investigations (either from the VACAPE Range Complex Study Area or other locations, and involving coincident explosives training or not involving coincident use).

(5) Results from general marine mammal and sound research (funded by the Navy or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§218.9 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.7 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.8, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.2(c), a Let-

ter of Authorization issued pursuant to §216.106 of this chapter and §218.7 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex (JAX Range Complex)

SOURCE: 74 FR 28365, June 15, 2009, unless otherwise noted.

§218.10 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the JAX Range Complex Operation Areas (OPAREAs), which are located along the southern east coast of the U.S. The two principal OPAREAs within the JAX Study Area are the Jacksonville OPAREA and the Charleston OPAREA (sometimes referred to collectively as the JAX/CHASN OPAREA, or simply the OPAREA). The northernmost point of the JAX/CHASN OPAREA is located just north of Wilmington, North Carolina (34°37' N) in waters less than 20 m (65.6 ft) deep, while the easternmost boundary lies 281 nm (518.6 km) offshore of Jacksonville, Florida (77°00' W in waters with a bottom depth of nearly 2,000 m [1.243 mi]).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

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- (i) Underwater Explosives:
 - (A) AGM-114 (Hellfire missile);
 - (B) AGM-65 E/F (Maverick missile);
 - (C) Mine Neutralization (20 lb NEW charges);
 - (D) 5" Naval Gunfire;
 - (E) MK3A2 anti-swimmer concussion grenades.
- (ii) Training Events:
 - (A) Mine Neutralization (20 lb NEW charges)—up to 60 exercises over the course of 5 years (an average of 12 per year);
 - (B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 350 exercises over the course of 5 years (an average of 70 per year);
 - (C) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick)—up to 15 exercises over the course of 5 years (an average of 3 per year);
 - (D) FIREX with IMPASS—up to 50 exercises over the course of 5 years (an average of 10 per year); and
 - (E) Small Arms Training with MK3A2 anti-swimmer concussion grenade (0.5 lbs NEW)—up to 400 grenades over the course of 5 years (an average of 80 HE grenades used per year).
- (2) [Reserved]
- (d) Regulations are effective June 5, 2011, through June 4, 2016.
- (e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in §218.10(c) should the amounts (e.g., number of exercises) vary from those estimated in §218.10(c), provided that the variation does not result in exceeding the amount of take indicated in §218.11(c).

[74 FR 28365, June 15, 2009, as amended at 76 FR 30554, May 26, 2011]

§218.11 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 of this chapter and 218.16, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.10(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

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- (b) The activities identified in §218.10(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.
- (c) The incidental take of marine mammals under the activities identified in §218.10(c) is limited to the following species, by the indicated method of take and the indicated number of times:
 - (1) Level B Harassment:
 - (i) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);
 - (ii) Pantropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually);
 - (iii) Clymene dolphin (*S. clymene*)—100 (an average of 20 annually);
 - (iv) Atlantic spotted dolphin (*S. frontalis*)—310 (an average of 62 annually);
 - (v) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);
 - (vi) Risso's dolphin (*Grampus griseus*)—150 (an average of 30 annually);
 - (vii) Common dolphin (*Delphinus delphis*)—150 (an average of 30 annually);
 - (viii) Pilot whales (*Globicephala* sp.)—100 (an average of 20 annually);
 - (ix) Dwarf or pygmy sperm whales (*Kogia* sp.)—15 (an average of 3 annually);
 - (x) Beaked whales—100 (an average of 20 annually);
 - (xi) Minke whales (*Balaenoptera acutorostrata*)—15 (an average of 3 annually).
 - (2) Level A Harassment (injury):
 - (i) Atlantic spotted dolphin—10 (an average of 2 annually).
 - (ii) [Reserved]

§218.12 Prohibitions.

Notwithstanding takings contemplated in §218.11 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.16, no person in connection with the activities described in §218.10 may:

- (a) Take any marine mammal not specified in §218.11(c);
- (b) Take any marine mammal specified in §218.11(c) other than by incidental take as specified in §218.11(c)(1) and (2);
- (c) Take a marine mammal specified in §218.11(c) if such taking results in